

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Honeywell International, Inc., et al.,)

Plaintiffs,)

v.)

Apple Computer, Inc., et al.,)

Defendants.)

Kyocera Wireless Corporation,)

Counterclaim Plaintiff,)

v.)

Honeywell International, Inc., et al.,)

Counterclaim Defendants.)

Kyocera Wireless Corporation,)

Third-Party Plaintiff,)

v.)

Philips Electronics North America Corp.,)

Wintek Electro-Optics Corporation,)

and Optrex America, Inc.)

Third-Party Defendants.)

C. A. No. 04-1338 (KAJ)

**WINTEK ELECTRO-OPTICS CORPORATION'S ANSWER TO
KYOCERA WIRELESS CORPORATION'S THIRD-PARTY COMPLAINT**

Third-Party Defendant Wintek Electro-Optics Corporation (“Wintek”) submits its Answer to Third-Party Kyocera Wireless Corporation’s (“Kyocera”) Third-Party Complaint as follows:

PARTIES

1. Wintek is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.
2. Wintek is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.
3. Wintek admits that it is a Delaware Corporation having its headquarters in Ann Arbor, Michigan.
4. Wintek is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

JURISDICTION AND VENUE

5. Wintek admits that this Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1367.
6. Wintek is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.
7. Wintek admits that this Court has personal jurisdiction over Wintek based on Wintek’s incorporation in Delaware.
8. Wintek is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

9. Wintek admits that venue is proper in this District under 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

10. Wintek admits that Kyocera attached to its third-party complaint as Exhibit A a copy of what purports to be a complaint (excluding exhibits) filed by Honeywell International, Inc. and Honeywell Intellectual Properties, Inc. against Kyocera et al. (“Honeywell’s Complaint”), and that complaint alleges patent infringement.

11. Wintek admits that Kyocera attached to its third-party complaint as Exhibit B a copy of what purports to be U.S. Patent 5,280,371, and that Honeywell’s Complaint alleges that Kyocera infringes the ’371 patent. Wintek otherwise denies the allegations of paragraph 11.

12. Wintek admits that Kyocera filed an Answer to Honeywell’s Complaint. (D.I. 80.) Wintek is otherwise without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph, and therefore denies them.

13. Wintek admits that it has manufactured and/or sold liquid crystal display (“LCD”) products to Kyocera. Wintek specifically denies that any LCD product it manufactured and/or sold to Kyocera infringes any claim of the ’371 patent. Thus Wintek is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph as they relate to Honeywell’s accusations that Kyocera’s products infringe the ’371 patent, and therefore denies them. Wintek is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph, including as they relate to parties other than Wintek, and therefore denies them.

COUNT 1

14. Wintek incorporates by reference its answers to the allegations set forth in paragraphs 1 through 13 above in answering paragraph 14.

15. Wintek is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

16. Wintek is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

17. Wintek admits that a provisions in certain of Kyocera's pre-printed, non-negotiated purchase orders purport to impose a duty on Wintek to indemnify and hold harmless Kyocera from claims of patent infringement subject to the conditions and limitations contained therein. Otherwise, Kyocera has not specifically identified any alleged contractual agreement between Kyocera and Wintek that imposes any duty on Wintek to indemnify and hold harmless Kyocera, and, therefore, Wintek lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph, and therefore denies them. Wintek further denies that it has provided to Kyocera any LCD product that infringes the '371 patent.

18. Wintek admits that Kyocera notified Wintek in or about December 2004 regarding the Honeywell complaint and Kyocera's request for indemnification and defense. Wintek otherwise denies the allegations of paragraph 18.

19. Wintek is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

20. Wintek is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

21. Wintek is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph as they relate to parties other than Wintek, and therefore denies them. Wintek denies that it has provided to Kyocera any LCD that infringes the '371 patent and, therefore, denies that it is liable to Kyocera for any portion of Honeywell's claims concerning the '371 patent or for any expenses incurred by Kyocera in defending against those claims.

DEMAND FOR JURY TRIAL

22. This paragraph contains no allegations and requires no response from Wintek.

PRAYER FOR RELIEF

Wintek denies that Kyocera is entitled to any of the relief prayed for in its Third-Party Complaint with respect to Wintek.

AFFIRMATIVE AND OTHER DEFENSES

Without conceding that any of the following necessarily must be pleaded as an affirmative defense, or that any of the following is not already at issue by virtue of the foregoing denials, and without prejudice to Wintek's right to plead additional defenses as discovery into the facts of the matter warrant, Wintek hereby asserts the following affirmative defenses:

First Defense

23. Wintek has not sold, transferred, conveyed, or otherwise provided to Kyocera any LCD product that infringes any valid claim of the '371 patent either directly,

contributorily, or by inducement, and therefore Wintek is not obligated to indemnify Kyocera as alleged in Kyocera's third-party complaint.

Second Defense

24. Upon information and belief, claims of the '371 patent that may be asserted by Honeywell in this case may be invalid for failure to meet and comply with the requirements of the United States patent laws, 35 U.S.C. §§ 100 *et seq.*, including but not limited to 35 U.S.C. §§ 102, 103, and 112, and Title 37, Code of Federal Regulations. Consequently, Wintek is not obligated to indemnify Kyocera as alleged in Kyocera's third-party complaint.

Third Defense

25. Upon information and belief, the claims of the '371 patent are unenforceable for inequitable conduct. Specifically, the inventors failed to cite known material prior art to the U.S. Patent and Trademark Office during production of the application maturing into the '371 patent. For example, the inventors knew, at least, of an article by H. Noda et al. titled "High Definition Liquid Crystal Projection TV," Japan Display 1989, pp. 256–59. The inventors knowledge of that article is demonstrated by a publication authored by at least two of the named inventors—R.I. McCartney and D. Syroid—titled "Direction Diffuser Lens Array for Backlit LCDs," Japan Display 1992, pp. 259–62, which specifically referenced the article by Noda. The applicants, however, never cited the Noda article to the Patent Office in contravention of their respective obligations under 37 C.F.R. § 1.56. Consequently, Wintek is not obligated to indemnify Kyocera as alleged in Kyocera's third-party complaint.

Fourth Defense

26. Upon information and belief, any alleged damages for which Kyocera may seek indemnification are partially or fully barred by 35 U.S.C. §§ 286 and 287.

Fifth Defense

27. To the extent that Kyocera relies on Kyocera Wireless Corp.'s Purchase Order Terms and Conditions as the basis for its indemnification claim, Kyocera has failed to satisfy the conditions precedent to a claim against Wintek in connection therewith, at least, by failing to submit the dispute to the exclusive jurisdiction of a court of competent jurisdiction in San Diego County, California.

Sixth Defense

28. To the extent that Kyocera's indemnification claim is made after a period provided for under the applicable statute of limitations, Wintek is not liable for any claim for damages or any liability found against Kyocera.

Seventh Defense

29. To the extent that Kyocera has reconfigured, modified, or combined the products made by Wintek with any other product, service, or technology not made by Wintek, and/or the products were designed in accordance with specifications furnished by Kyocera, Wintek is not liable for any claim for damages or any liability found against Kyocera.

Eighth Defense

30. By its conduct, action, and inaction, Kyocera has waived or discharged any indemnity obligation Wintek could owe to Kyocera.

PRAYERS FOR RELIEF

WHEREFORE, Wintek respectfully requests that the Court:

- A. Dismiss Kyocera's Third-Party Complaint with prejudice; and
- B. Grant such further relief as the Court deems just and proper.

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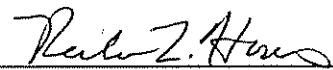
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**IN THE UNITED STATES DISTRICT COURT
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CERTIFICATE OF SERVICE

I, Richard L. Horwitz, hereby certify that on May 5, 2005, the attached document was served via hand-delivery and was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

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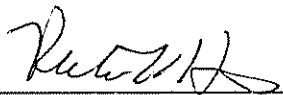
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